



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC NO.: HOfs14050344
[REDACTED]

JAMAL L. SMITH, in his official capacity as
EXECUTIVE DIRECTOR of the
INDIANA CIVIL RIGHTS COMMISSION,
Complainant,
v.

ALVA & JERRILYN LEMON, D,
Respondent,

NOTICE OF FINDING and
ISSUANCE OF CHARGE

The Executive Director of the Indiana Civil Rights Commission ("Commission") pursuant to statutory authority and procedural regulations, hereby issues the following finding with respect to the above-referenced case. Reasonable cause exists to believe that an unlawful discriminatory practice occurred in this instance. A Charge is therefore issued in accordance with 910 IAC 2-6-6(b).

On May 2, 2014, [REDACTED] ("Complainant") filed a Complaint with the Commission against Alva and Jerilynn Lemon, D ("Respondents") alleging discrimination on the basis of familial status in violation of the Indiana Fair Housing Act (Ind. Code § 22-9.5, *et seq.*) the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) [REDACTED]
Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The first issue before the Commission is whether Respondent refused to rent to Complainant because of her familial status. In order to prevail on such a claim, Complainant must show that 1) she is a member of a protected class; 2) Complainant was qualified, ready, willing, and able to rent in a manner consistent with Respondents' reasonable terms and conditions; 3) Complainant made a bona fide offer to rent from Respondents; 4) Respondents refused to rent to Complainant; and 5) after refusing to rent to Complainant, the property remained available or Respondents rented to a less qualified individual without children.



It is evident that Complainant is a member of a protected class because she resides with two children under the age of 18; however, there is insufficient evidence to show that she was qualified to rent from Respondents or that she made a bona fide offer to rent from Respondents. Moreover, no evidence has been submitted or uncovered to show that Respondents rented the property to a less qualified individual.

By way of background and at all times relevant to the Complainant, Complainant was searching for a residence for her fiancé and two children under the age of 18. Complainant alleges that on or about March 13, 2014, Complainant responded to a “for rent” sign regarding a 2-bedroom home located at 2133 Ray Street. While Respondents contend they are unsure whether Complainant inquired about the properties in question, they admit that they received multiple inquiries about the homes. Nonetheless, evidence suggests that Complainant called and requested information about the home including the monthly rent, deposit amount, pet policy, and other incidentals. Complainant further alleges that Respondent asked whether she had children and mentioned that the place “wouldn’t work out” once she responded in the affirmative. However, Complainant admits that she never introduced herself to Respondent or asked about submitting an application for the property. Complainant also alleges that later in the day, she drove past a dwelling located at 1003 South Sheffield. As the dwelling appeared to be empty and Complainant noticed a woman exiting the residence, Complainant asserts she inquired into the availability of the unit. After inquiring about the monthly rent as well as other deposit information, the woman asked if she had any children. Upon responding in the affirmative, Complainant asserts that the woman stated that the owner could not rent to them. At all times relevant to the Complaint, Respondents owned both of the aforementioned properties.

Despite Complainant’s assertions, there is insufficient evidence to show that Complainant was denied an opportunity to rent. While Respondents have an informal application process, Complainant admits that she never made a bona fide offer to rent. Further, no evidence has been provided or uncovered to show that Complainant was qualified to rent the properties from Respondents or that less qualified individuals were permitted to rent the premises. As such and based upon the aforementioned, there is no reasonable cause to believe that Complainant was denied an opportunity to rent.

The second issue before the Commission is whether Respondents made discriminatory statements demonstrating a preference for applicants without children. During the course of the instant investigation, Respondents admitted to the Commission that they prefer to rent their two-bedroom units to individuals/couples with one child because of the limited square footage of the homes despite evidence that the homes in question are approximately 700 square feet. Further, Jerilynn Lemond (hereafter “J.L.”) informed the Commission that she refuses to rent upstairs units to individuals with children as she does not want them to get hurt. Moreover, J.L. also revealed in her interview that it is her property and she can “determine how many children can live in a house.” While Complainant was not aware of the aforementioned

statements, she asserts that an individual leaving the home informed her that the properties were “too small for children.”

Despite Respondents’ assertions, there is sufficient evidence to show that a discriminatory practice occurred in this instance. Specifically, the law prohibits the “publication, posting, or mailing of a notice, a statement, or an advertisement prohibited under Ind. Code § 22-9.5-5-2.” Moreover, Respondents’ statements clearly show a preference for renters without children and create a disparate impact on potential tenants with children. As such and based upon the aforementioned, reasonable cause exists to believe that a discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Fair Housing Act, the Indiana Civil Rights Law, and/or Title VIII of the Civil Rights Act of 1968, as amended, occurred in the aforementioned case. As permitted by 910 IAC 2-6-6(h), Respondents, Complainant, or an aggrieved person on whose behalf the Complaint is filed may elect to have the claims asserted in a civil action under Ind. Code § 22-9.5-6-12 in lieu of an administrative proceeding under 910 IAC 2-7. In the event the parties seek to pursue such an election, it must be made not later than twenty (20) days after the receipt of service of this Notice of Finding and Charge. The notice of any such election must be filed with the Commission and served on the Director, the Respondents, and Complainant in accordance with 910 IAC 2-6-6. If such an election is not timely made, the administrative proceedings initiated by the Charge will continue as scheduled. 910 IAC 2-6-6. Moreover, the Respondent shall have an opportunity to file an answer to this charge within thirty (30) days of service of this Charge. Angella Patterson and any other person aggrieved by this alleged discriminatory practice may participate as a party in the hearing by filing a request for intervention. All discovery in this matter must be completed fifteen (15) days prior to the date of hearing. If at any time following service of this charge Respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of this charge, Respondent must provide a copy of this charge to the person prior to entering into such contract, sale, encumbrance or lease. 910 IAC 2-7-4(e)(3).

November 5, 2014

Date

Jamal L. Smith

Executive Director

Indiana Civil Rights Commission